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Plaintiff.
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WESTERN DISTRICT OF TEXAS

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**S A09CA0796**

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## COMPLAINT

### NATURE OF THE ACTION

## JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f) (1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Texas, San Antonio Division.

### **PARTIES**

3. Plaintiff, the Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Odyssey Healthcare, has continuously been a Delaware corporation doing business in the State of Texas and the City of Kerrville and has continuously had at least 15 employees.

5. At all relevant times, Defendant, Odyssey Healthcare, has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

### **STATEMENT OF CLAIMS**

6. More than thirty days prior to the institution of this lawsuit, Aless D. Menchaca filed a charge with the Commission alleging violations of Title VII by Defendant, Odyssey Healthcare. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least February 20, 2008, Defendant, Odyssey Healthcare, engaged in unlawful employment practices at its Kerrville, Texas facility, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a), in that Defendant, Odyssey Healthcare, discriminated against Aless D. Menchaca by discharging him from the position of Executive Director because

of his national origin, Hispanic. Defendant, Odyssey Healthcare, also retaliated against Aless D. Menchaca by, among other things, discharging him for reporting this discriminatory treatment in violation of Section 704(a) of Title VII.

8. The effect of the practices complained of in Para. No. 7 has been to deprive Aless D. Menchaca of equal employment opportunities and to otherwise adversely affect his status as a employee because of his national origin and/or because he reported Defendant, Odyssey Healthcare's discriminatory practices and conduct.

9. The unlawful employment practices complained of in Para. No. 7 above were intentional.

10. The unlawful employment practices complained of in Para. No. 7 above were done with malice or with reckless indifference to the federally protected rights of Aless D. Menchaca.

#### **PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, Odyssey Healthcare, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in any practice and/or conduct that discriminates on the basis of national origin, including, but not limited to, disparate discipline or discharge, and any other employment practice which discriminates on the bases of national origin;

B. Grant a permanent injunction enjoining Defendant, Odyssey Healthcare, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in any form of retaliation for conduct protected by Title VII;

C. Order Defendant, Odyssey Healthcare, to institute and carry out policies, practices, and programs which provide equal employment opportunities for Hispanics and those

who engage in statutorily protected activity, and which eradicate the effects of its past and present unlawful employment practices;

D. Order Defendant, Odyssey Healthcare, to make whole Aless D. Menchaca, by providing appropriate back pay with prejudgment interest, in an amount to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement, or front pay in lieu thereof;

E. Order Defendant, Odyssey Healthcare, to make whole Aless D. Menchaca, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in Para. No. 7 above, including, but not limited to, relocation expenses, job search expenses, and medical expenses, in an amount to be determined at trial;

F. Order Defendant, Odyssey Healthcare, to make whole Aless D. Menchaca, by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of in Para. No. 7 above, including, but not limited to, emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in an amount to be determined at trial;

G. Order Defendant, Odyssey Healthcare, to pay Aless D. Menchaca punitive damages for engaging in discriminatory practices with malice or reckless indifference described in Para. No. 7 above, in an amount to be determined at trial;

H. Grant such further relief as the Court deems necessary and proper in the public interest; and

I. Award the Commission its costs of this action.


#### **JURY TRIAL DEMAND**


The Commission requests a jury trial on all questions of fact raised by its Complaint.

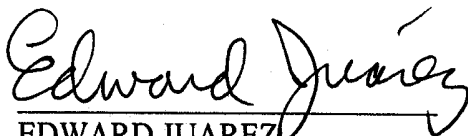
Respectfully submitted,

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